

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

'05 JUN -9 P4:11

THEODORE WILLIAMS,

Petitioner,

v.

KENNETH McKEE,

Respondent,

U.S. DIST. COURT CLERK
Civil No. 05-CV-70035-DT EAST DIST. MICH
HONORABLE NANCY G. EDMUNDS
DETROIT-PSG
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER GRANTING THE MOTION TO AMEND PETITION FOR WRIT
OF HABEAS CORPUS AND ORDERING THAT THE AMENDED PETITION BE
SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL.**

Petitioner filed a petition for writ of habeas corpus with this Court on January 3, 2005, seeking the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, filed *pro se*, petitioner challenges his conviction and sentence on one count of first-degree felony murder and possession of a firearm in the commission of a felony. On February 10, 2005, Magistrate Judge R. Steven Whalen signed an Order Requiring Responsive Pleading, in which respondent was ordered to file an answer to the petition by August 18, 2005. Respondent has not yet filed an answer to the petition.

On May 10, 2005, petitioner filed a motion to amend the petition for writ of habeas corpus to add additional claims to his petition for writ of habeas corpus. Respondent has not responded to the motion to amend. For the reasons stated below, the motion to amend the petition for writ of habeas corpus is **GRANTED**. The Court will also order that the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus upon respondent and the Michigan Attorney General's Office by first class mail.

I. DISCUSSION

The decision to grant or deny a motion to amend a habeas petition is within the discretion of the district court. *Clemmons v. Delo*, 177 F. 3d 680, 686 (8th Cir. 1999); *citing to Fed.R.Civ.P. Rule 15*. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F. 3d 320, 341-342 (6th Cir. 1998). A motion to amend a habeas petition may be denied when it has been unduly delayed and when allowing the motion would prejudice the nonmovant. *Smith v. Angelone*, 111 F. 3d 1126, 1134 (4th Cir. 1997)(internal citations omitted). However, delay by itself is not sufficient to deny a motion to amend. *Coe*, 161 F. 3d at 342.

The Court will permit petitioner to amend his petition to include these additional claims. Petitioner's proposed amended habeas petition advances new claims that may have arguable merit, was not the subject of undue delay, and would not unduly prejudice respondent. Accordingly, the motion to amend should be granted. *See Riley v. Taylor*, 62 F. 3d 86, 92 (3rd Cir. 1995). There is no indication that allowing the amendment would cause any delay to this Court nor is there any evidence of bad faith on petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. *See Gillette v. Tansy*, 17 F. 3d 308, 313 (10th Cir. 1994). Additionally, because petitioner has filed this motion to amend the petition before the Court has adjudicated the issues in his petition, the motion to amend should be granted. *Stewart v. Angelone*, 186 F.R.D. 342, 343 (E.D. Va. 1999). Accordingly, the Court will permit petitioner to amend his petition.

The Court will further order that the Clerk of the Court serve a copy of the amended

habeas petition and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4.

II. ORDER



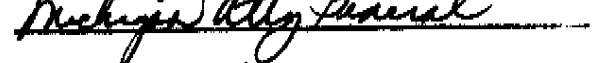
IT IS HEREBY ORDERED That Petitioner's Motion to Amend the Petition for Writ of Habeas Corpus is **GRANTED**.

IT IS FURTHER ORDERED That the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus and a copy of this Order on respondent and the Attorney General by first class mail.



HON. NANCY G. EDMUNDS
UNITED STATES DISTRICT COURT

dated: JUN - 9 2005

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ON 6/9/05


DEPUTY COURT CLERK